

The Service Occupation Tax is a tax imposed upon servicemen engaged in the business of making sales of service in this State, based on the tangible personal property transferred incident to sales of service. See 86 Ill. Adm. Code Part 140. (This is a GIL.)

July 13, 2018

RE: Retailers Occupation Tax and Use Tax - Jurisdiction

Dear Xxxxx:

This letter is in response to your letter dated December 5, 2017, and your email dated April 16, 2018, in which you requested information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.tax.illinois.gov to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

We are requesting a Private Letter Ruling regarding the application of Retailers [sic] Occupation Tax and Use Tax on our sales for the upcoming tax year 2018. We would like to have authoritative guidance from the Illinois Department of Revenue as to the proper sourcing and thus collection of tax on our customers due to the complexities as described in id. Section 320.115(b)(3). We have included an example of a contract. We are currently not under audit or litigation with the Illinois Department of Revenue. We have not previously requested a ruling on this matter nor has any of our representatives. We have not previously requested a similar ruling and withdrew it prior to a ruling being issued.

FACTS:

COMPANY sells and services various office machines in Illinois. Our sales representatives and service technicians often perform their tasks, sales and service respectively, at our customers' locations. We have an office in CITY, Illinois. The office in CITY houses inventory and provides administrative support.

Sales Representatives

Sales Representatives, a majority of the time, go to customer locations to “engage in the business of selling.” While at these customer locations, which are within various jurisdictions and thus subject to a variety of rates and parties to whom tax should be collected on behalf of, the sales representatives enter in a contract for the sale of goods, establish the terms of payment, and physically exist in that location for the duration of the sale. The sales representative has the discretion and authority to solicit customers on behalf of the company at the customer’s location, enter into a binding agreement, accept payment, and bind the company to the specific performance at that location, generally, the delivery of equipment.

Service Technicians

Service Technicians utilize the office in CITY to restock their vehicles with supplies, obtain work orders either in person or on a mobile device, and receive training. Apart from these activities, service technicians are on the road nearly the entire time performing work at customer locations. The transfer of property occurs at the customer’s property (specific performance), additional work is performed while onsite if noted (binding agreement), and if necessary, the service technicians can make recommendations for different or new equipment which would be an introduction for a sales representative.

Corporate Headquarters

The corporate headquarters house inventory and will drop ship supplies to customers. In addition, the headquarters has a showroom to display and sell equipment to walk-in customers. The executive offices are located at this location. Administrative functions such as payroll, ordering bulk supplies, and supporting in-house sales staff is accomplished at the facility

ANALYSIS:

Title 86 Ill. Adm. Code 320.115(c)(1)-(2) discusses primary selling activities. These activities are: location of sales personal, location where the seller takes action that binds it to the sale, location where payment is tendered and received, location of inventory, and location of the business headquarters. Given the requirement as outlined in 320.115(c)(2) three of these five activities must occur at a location in order to determine the relevant jurisdiction to which the tax must be remitted to. As outlined previously, we believe our sales representatives and service technicians consistently accomplish three of the five activities at customer locations. The in-house sales staff and administrative support teams accomplish all five tasks for customers who make purchases in our showroom or via phone in orders.

CONCLUSION:

Given the facts as outline above and our analysis, we believe that we are subject to Retailers [sic] Occupation Tax and Use Tax in the various jurisdictions in which our sales representatives and service technicians operate. In addition, we believe we are subject to the same tax for sales originating out of our CITY, Illinois corporate office that are completed by our in-house sales staff and administrative department. Therefore, our sales should be sourced to various jurisdictions.

We are considering the Regulations as outlined under Title 86 Ill. Adm. Code 320.115 in support of our conclusion. We believe that our sales representatives and service technicians derive the benefit of the local governments in those various districts. Within this same administrative code, we believe there is authority that is contrary to our view, namely that all sales would be sourced to the Corporate Office in CITY, Illinois.

Therefore, we are asking for a Private Letter Ruling from the Department in order to properly determine our obligation to collect and remit Retailers Occupation Tax and Use Tax for 2018.

DECLARATION:

Under penalties of perjury, I declare that I have examined this request and, to the best of my knowledge and belief, the request contains all the relevant facts relating to the request, and such facts are true, correct, and complete.

By email dated April 16, 2018, you provided the following information:

When we sell a new printer/copier as described in my initial letter, the customer usually purchases a service agreement like the one attached. They pay an additional annual fee, and we provide maintenance, repairs (including labor and parts), and also supplies (toner).

DEPARTMENT'S RESPONSE:

The Department's regulation "Public Information, Rulemaking and Organization," provides that "[w]hether to issue a private letter ruling in response to a letter ruling request is within the discretion of the Department. The Department will respond to all requests for private letter rulings either by issuance of a ruling or by a letter explaining that the request for ruling will not be honored." 2 Ill. Adm. Code 1200.110(a)(4). The Department recently met and determined that, due to the limited information provided in your letter, it would decline to issue a Private Letter Ruling in response to your request. We hope, however, the following General Information Letter will be helpful in addressing your questions.

SALES TECHNICIANS

You state in your letter that your sales representatives travel to customer locations and make sales at retail of tangible personal property to customers from a stock of goods on the sales representatives' vehicles.

Sales and Occupation Taxes

The Illinois Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. See 86 Ill. Adm. Code 130.101. In Illinois, Use Tax is imposed on the privilege of using, in this State, any kind of tangible personal property that is purchased anywhere at retail from a retailer. See 86 Ill. Adm. Code 150.101. These taxes comprise what is commonly known as "sales" tax in Illinois. If the purchases occur in Illinois, the purchasers must pay the Use Tax to the retailer at the time of purchase. The retailers are then allowed to reduce the amount of Use Tax they must remit by the amount of

Retailers' Occupation Tax liability which they are required to and do pay to the Department with respect to the same sales. See 86 Ill. Adm. Code 150.130.

Sales from Vehicles Carrying Uncommitted Stock of Goods

A seller's place of engaging in business when making sales and deliveries (not just deliveries pursuant to previously completed sales, but actual sales and deliveries) from a vehicle in which a stock of goods is being carried for sale is the place at which the sales and deliveries actually are made. The vehicle carrying the stock of goods for sale is regarded as a portable place of business. 86 Ill. Adm. Code 270.115(c)(3)(C). The sales made from these vehicles would be subject to Retailers' Occupation Tax and Use Tax and any local occupation taxes imposed by units of local government at the location where the sales take place.

SERVICE TECHNICIANS

You state in your letter that service technicians restock their vehicles at the CITY location and obtain work orders either in person or on a mobile device. They perform work at customer locations and transfer tangible personal property in the performance of their work. You state that, in some cases, tangible personal property is transferred pursuant to a maintenance agreement. Other times, service may be performed and tangible property transferred to customers that do not have maintenance agreements.

Service Occupation Tax

Retailers' Occupation and Use Taxes do not apply to sales of service. Under the Service Occupation Tax Act, businesses providing services (i.e., servicemen) are taxed on tangible personal property transferred as an incident to sales of service. See 86 Ill. Adm. Code 140.101.

The transfer of tangible personal property to service customers may result in either Service Occupation Tax liability or Use Tax liability for servicemen, depending upon which tax base they choose to calculate their liability. Servicemen may calculate their tax base in one of four ways: (1) separately stated selling price; (2) 50% of the entire bill; (3) Service Occupation Tax on cost price if they are registered de minimis servicemen; or (4) Use Tax on cost price if the servicemen are de minimis and are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act.

Using the first method, servicemen may separately state the selling price of each item transferred as a result of sales of service. The tax is based on the separately stated selling price of the tangible personal property transferred. If servicemen do not wish to separately state the selling price of the tangible personal property transferred, those servicemen must use the second method where they will use 50% of the entire bill to their service customers as the tax base. Both of the above methods provide that in no event may the tax base be less than the cost price of the tangible personal property transferred. Under these methods, servicemen may provide their suppliers with Certificates of Resale when purchasing the tangible personal property to be transferred as a part of sales of service. They are required to collect the corresponding Service Use Tax from their customers.

The third way servicemen may account for their tax liability only applies to de minimis servicemen who have either chosen to be registered or are required to be registered because they

incur Retailers' Occupation Tax liability with respect to a portion of their business. Servicemen may qualify as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). See 86 Ill. Adm. Code 140.101(f). This class of registered de minimis servicemen is authorized to pay Service Occupation Tax (which includes local taxes) based upon the cost price of tangible personal property transferred incident to sales of service. Servicemen that incur Service Occupation Tax collect the Service Use Tax from their customers. They remit tax to the Department by filing returns and do not pay tax to their suppliers. They provide suppliers with Certificates of Resale for the tangible personal property transferred to service customers.

The final method of determining tax liability may be used by de minimis servicemen that are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act. Servicemen may qualify as de minimis if they determine that the annual aggregate cost price of tangible personal property transferred as an incident of sales of service is less than 35% of the servicemen's annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). Such de minimis servicemen handle their tax liability by paying Use Tax to their suppliers. If their suppliers are not registered to collect and remit tax, the servicemen must register, self-assess, and remit Use Tax to the Department. The servicemen are considered to be the end-users of the tangible personal property transferred incident to service. Consequently, they are not authorized to collect a "tax" from the service customers. See 86 Ill. Adm. Code 140.108.

Based on the limited facts you have provided, it would appear that local service occupation taxes should be calculated using the rate in CITY.

If a company only performs services and does not transfer any tangible personal property, no tax liability will arise from performing the services.

Maintenance Contracts

The taxability of a maintenance or service agreement depends upon whether the charge for the agreement is included in the selling price of tangible personal property. If the charge for the agreement is included in the selling price of tangible personal property, the charge is part of the gross receipts of the retail transaction and is subject to tax. No tax is incurred on the maintenance services or parts when the repair or servicing is performed.

If a maintenance agreement is sold separately from tangible personal property, the sale of the agreement is not a taxable transaction. However, when maintenance services or parts are provided under the terms of the maintenance agreement, the seller of the maintenance agreement will be acting as a service provider under provisions of the Service Occupation Tax Act. The Service Occupation Tax provides that when a service provider enters into an agreement to provide maintenance services for particular pieces of equipment for a stated period of time at predetermined fees, the service provider incurs Use Tax based on its cost price of tangible personal property transferred to the customer incident to the completion of the maintenance service. See 86 Ill. Adm. Code 140.301(b)(3). Further, the purchaser of the separate agreement is not charged tax on the labor or tangible personal property that is transferred incident to the completion of the maintenance agreement. If a deductible is charged to the purchaser under the terms of the separate agreement, the deductible is also not subject to tax.

Retail Sales by Servicemen

The maintenance agreement you provided to us indicates that customers may purchase additional toner, staples and paper from the company. The agreement also mentions the sale of accessories by the company to its service customers. If service technicians make retail sales of tangible personal property that are not transferred as part of sales of service, the sales are subject to Retailers' Occupation Tax and Use Tax and local occupation taxes, depending on where the sales take place. See 86 Ill. Adm. Code 270.115.

CORPORATE HEADQUARTERS

In your letter you state that sales are made at the corporate headquarters in CITY. The company's inventory is maintained at this location. The company will drop ship supplies to customers and make sales of equipment to walk-in customers.

Over the Counter Sales

If a purchaser is present at the company headquarters, enters into an agreement with the company's sales personnel to purchase tangible personal property, and makes payment for the property at the company's headquarters, then retailers' occupation tax for that sale is determined based on the jurisdiction in which the headquarters is located, regardless of whether the purchaser takes immediate possession of the tangible personal property, or the company delivers or arranges for the property to be delivered to the purchaser. 86 Ill. Adm. Code 270.115(c)(3)(A).

Drop Shipments

A drop-shipment situation is normally one in which out-of-State purchaser (Purchaser) makes a purchase for resale from a company (Company) which is registered with Illinois and has that Company drop-ship the property to Purchaser's customer (Customer) located in Illinois. For purposes of this discussion, it is assumed that Purchaser is an out-of-State company that is not registered with the State of Illinois and does not have sufficient nexus with Illinois to require it to collect Illinois Use Tax.

Company, as a seller required to collect Illinois tax, must either charge and collect tax or document appropriate exemptions when making deliveries in Illinois. In order to document the fact that its sale to Purchaser is a sale for resale, Company is obligated by Illinois to obtain a valid Certificate of Resale from Purchaser. See 86 Ill. Adm. Code 130.1405. A Certificate of Resale is a statement signed by the purchaser that the property purchased by him is purchased for purposes of resale. In addition to the statement that the property is being purchased for resale, a Certificate of Resale must contain:

- 1) The seller's name and address;
- 2) The purchaser's name and address;
- 3) A description of the items being purchased for resale;
- 4) Purchaser's signature, or the signature of an authorized employee or agent of the purchaser, and date of signing; and

- 5) Registration Number, Resale Number, or a statement that the purchaser is an out-of-State purchaser who will sell only to purchasers located outside the State of Illinois.

The Department provides a standard form for documenting sales for resale (Form CRT-61 Certificate of Resale). This form can be obtained from the Department's website.

The obligations of a seller with respect to accepting a Certificate of Resale were addressed in *Rock Island Tobacco and Specialty Company v. Illinois Department of Revenue*, 87 Ill.App.3d 476, 409 N.E.2d 136, 42 Ill. Dec. 641 (3rd Dist. 1980). The *Rock Island* court held that when a retailer obtains a proper Certificate of Resale that contains a registration or resale number that is valid on the date it is given, the retailer's liability is at an end. If the purchaser uses that item himself or herself (i.e., it was not purchased for resale), the Department will proceed against the purchaser, not the retailer, provided the above stated conditions are met. The purchaser's registration or reseller number can be verified at the Department's website by clicking on the "Tax registration inquiry" box.

Failure to present an active registration number or resale number and a certification to the seller that a sale is for resale creates a presumption that a sale is not for resale. This presumption may be rebutted by other evidence that all of the seller's sales are sales for resale or that a particular sale is a sale for resale. For example, other evidence that might be used to document a sale for resale, when a registration number or resale number and certification to the seller are not provided, could include an invoice from the purchaser to his customer showing that the item was actually resold, along with a statement from the purchaser explaining why it had not obtained a resale number and certifying that the purchase was a purchase for resale in Illinois. The risk run by a retailer in accepting such other documentation and the risk run by purchasers in providing such other documentation is that an Illinois auditor is more likely to require that more information be provided as evidence that the particular sale was, in fact, a sale for resale.

If you have further questions related to the Illinois sales tax laws, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

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